

1 DEBT MANAGEMENT, LLC)
 2 PREVIOUSLY SUED AS DOE)
 3 NO. 4, AND DOES 5 THROUGH)
 4 100 INCLUSIVE,)
 5) Department 10-A
 Defendants.) Hon. Josephine L. Staton

6 Plaintiffs allege as follows:
 7

8 **PARTIES**

- 9 1. Plaintiffs MICHELL T. FRANKLIN, KARA SAMPSON (formerly known
 10 as Kara Christensen), and CYBELE A. MUNSON, individuals, bring this
 11 action on behalf of themselves, and on behalf of a class of similarly
 12 situated persons pursuant to Code of Civil Procedure § 382. Plaintiffs are
 13 residents of the State of California and competent adults.
 14
 15 2. Plaintiffs are informed and believe and thereupon allege that Defendant
 16 MIDWEST RECOVERY SYSTEMS, LLC ("Midwest") is now, and at all
 17 times mentioned in this Complaint was, a limited liability company based
 18 in St. Charles, Missouri. Defendant has not designated a principal place
 19 of business in the State of California.
 20
 21 3. Plaintiffs are informed and believe, and thereupon allege, that Defendant
 22 COOPER FINANCIAL, LLC ("Cooper") is now, and at all times mentioned
 23 in this Complaint was, a limited liability company that is a citizen of the
 24 State of Florida. It was previously sued and named as Doe Defendant no.
 25 1.
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- 1 4. Plaintiffs are informed and believe, and thereupon allege, that Defendant
2 MARK GRAY ("Gray") is now, and at all times mentioned in this
3 Complaint was, a natural person and citizen of the State of Florida. He
4 was previously sued and named as Doe Defendant no. 2.
- 5
6 5. Plaintiffs are informed and believe, and thereupon allege, that Defendant
7 NATIONAL CREDIT ADJUSTERS, LLC ("NCA") is now, and at all times
8 mentioned in this Complaint was, a limited liability company that is a
9 citizen of the State of Kansas. It was previously sued as Doe Defendant
10 no. 3.
- 11
12 6. Plaintiffs are informed and believe, and thereupon allege, that Defendant
13 DEBT MANAGEMENT, LLC ("Debt Management") is now, and at all
14 times mentioned in this Complaint was, a limited liability company that
15 is a citizen of the State of Florida. It was previously sued as Doe Defendant
16 no. 4.
- 17
18 7. Plaintiffs do not know the true names or capacities of the Defendants sued
19 herein as DOES 5 through 100 inclusive, and therefore sue these
20 Defendants by such fictitious names. Plaintiffs will amend this complaint
21 to allege their true names and capacities when ascertained. Plaintiffs are
22 informed and believe, and thereon allege, that each of these fictitiously
23 named Defendants is responsible in some manner for the occurrences
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herein alleged, and that Plaintiffs' damages as herein alleged were proximately caused by those defendants. Each reference in this complaint to "Defendant" or "Defendants" or to a specifically named defendant refers also to all defendants sued under fictitious names.

8. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned each of the Defendants, including all Defendants sued under fictitious names, and each of the persons who are not parties to this action but are identified by name or otherwise throughout this complaint, was the alter ego of each of the remaining defendants, was the successor in interest or predecessor in interest, and was the agent and employee of each of the remaining defendants and in doing the things herein alleged was acting within the course and scope of this agency and employment.

CLASS ALLEGATIONS

9. Plaintiffs are members of the Main Class of persons, the members of which are similarly situated to each other member of that class. The Main Class is defined as follows:

All California residents whose SUBJECT LOAN DEBT INFORMATION was furnished by Defendant Midwest to consumer reporting agencies during the past two years from filing of the original complaint. For purposes of this definition, "SUBJECT LOAN DEBT INFORMATION" means information that a debt was allegedly owed to any of the following original creditors: VIP PDL Services, LLC, a/k/a VIP

1 Loan Shop; SCS Processing, LLC, a/k/a Everest Cash
2 Advance; Action PDL Services, LLC, a/k/a Action
3 Payday; BD PDL Services, LLC, a/k/a Bottom Dollar
4 Payday, Integrity PDL Services, LLC, a/k/a Integrity
5 Payday Loans, a/k/a IPL Today; My Quick Funds
d/b/a Sierra Financial, LLC; Fast EFunds a/k/a
FastEfunds.com.

6
7 10. Plaintiffs Sampson and Munson are members of the Restitution
8 Subclass of persons, the members of which are similarly situated to each
9 other member of that subclass. The subclass is defined as follows:

10 All members of the Main Class who paid money to
11 Defendant Midwest after Midwest furnished the
12 SUBJECT LOAN DEBT INFORMATION to
13 consumer reporting agencies.

14 11. Plaintiffs are informed and believe, and thereupon allege, that the Main
15 Class consists of approximately 11,000 persons and the Restitution
16 Subclass consists of approximately 200 persons.

17
18 12. The identity of the members of the classes is ascertainable from
19 Defendant Midwest's own business records or those of its agents.

20
21 13. The Plaintiffs and Class Members' claims against Defendants involve
22 questions of law or fact common to the class that are substantially similar
23 and predominate over questions affecting individual Class Members in
24 that all Class Members had alleged payday loan debt that was reported by
25 Defendant Midwest to consumer reporting agencies and, in each instance,
26 Defendant reported an illegal and void debt, and in some cases the Class
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1 Members paid money to Midwest.

2 14.The claims of Plaintiffs are typical of the claims of the members of the
3 Classes.
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5 15.Plaintiffs can fairly and adequately represent the interests of the Classes.

6 **FIRST CAUSE OF ACTION FOR VIOLATION OF THE**
7 **CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES**
8 **ACT, CIVIL CODE § 1785 ET. SEQ., AGAINST ALL DEFENDANTS**
9 **(BROUGHT AS AN INDIVIDUAL ACTION AND AS A CLASS**
10 **ACTION)**
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13 16.Plaintiffs incorporate in this cause of action the allegations contained in
14 paragraphs 1 through 15, inclusive.
15

16 17.VIP PDL Services, LLC, a/k/a VIP Loan Shop, SCS Processing, LLC, a/k/a
17 Everest Cash Advance, Action PDL Services, LLC, a/k/a Action Payday,
18 BD PDL Services, LLC, a/k/a Bottom Dollar Payday, Integrity PDL
19 Services, LLC, a/k/a Integrity Payday Loans, a/k/a IPL Today, My Quick
20 Funds d/b/a Sierra Financial, LLC, and Fast EFunds a/k/a
21 FastEfunds.com were payday loan companies operating between 2009
22 and 2014 from one of several overseas locations. Although the companies
23 had no licenses to make loans in California, as required by California law,
24 and despite cease and desist orders issued by the State of California, they
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1 made tens of thousands of loans to California residents.

2 18. All of the loans were illegal for a number of reasons, including inter
3 alia, because the lenders were not licensed and because they charged more
4 in finance charges than permitted by California law. Under California law,
5 such loans are and were deemed void by operation of law and the lender
6 was deemed to have forfeited principal and interest.
7

8
9 19. By 2014, it was well known and understood in the financial industry,
10 including in the collection industry, that these loans were illegal. All of
11 the lenders shut down operations by 2015.
12

13 20. Plaintiffs obtained loans from Bottom Dollar Payday and Everest Cash
14 Advance 2011 and 2012.
15

16 21. On a date unknown to Plaintiffs, the lenders assigned, transferred or sold
17 the debt to Defendant NCA, which subsequently transferred it to Debt
18 Management, which transferred it to Defendant Cooper. Defendant Mark
19 Gray is the owner and sole manager of Cooper and controls all of its
20 actions. In March 2017, Cooper and Mark Gray hired Defendant Midwest
21 to collect the debt, using whatever means were necessary including by
22 furnishing the debt information to the consumer reporting agencies.
23

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25 22. Knowing the debt was not enforceable in court and few if any
26 borrowers would voluntarily pay such debt, Midwest decided to use the
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1 leverage of credit-reporting to compel borrowers to make payments on
2 the alleged debt.

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4 23. In any event, on May 13, 2018 with respect to Plaintiff Franklin, and
5 on December 24, 2017 with respect to Plaintiffs Sampson and Munson,
6 Midwest furnished information to consumer credit reporting agencies,
7 including Equifax, Experian and TransUnion, stating that Plaintiffs owed
8 money to the illegal lenders.
9

10 24. Specifically, with respect to Plaintiff Franklin, Midwest furnished
11 information claiming she owed \$308 to Bottom Dollar and \$1,125 to
12 Everest Cash Advance and that the accounts were in collections and past
13 due for years.
14
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16 25. After Franklin disputed these debts to TransUnion, the credit bureau
17 contacted Midwest, which verified that the debt information was accurate.
18 As a result, despite Plaintiffs' dispute, TransUnion refused to remove the
19 debt information from her reports. TransUnion indicated the debt
20 information would remain on her credit report through February 2019
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22

23 26. With respect to Plaintiff Sampson, on December 24, 2017, Midwest
24 furnished information claiming she owed \$817 to Everest Cash Advance
25 and that the account was in collections and past due for years.
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27 27. Shortly thereafter, Sampson received an alert from a credit monitoring
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1 service and discovered the new collections account. She called the phone
2 number associated with the collection agency and spoke to someone at
3 Midwest Recovery. The agent told her that if she paid \$408, he would
4 remove the debt from her credit report; otherwise it would remain. Under
5 duress, and in an effort to remove the damaging adverse information, she
6 paid the money. Shortly thereafter, the debt was removed from her credit
7 reports.
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9
10 28. With respect to Plaintiff Munson, Midwest furnished information
11 claiming she owed \$505 to Bottom Dollar and that the account was in
12 collections and past due for years.
13

14 29. Shortly thereafter, Munson became aware of the collections account.
15 She wrote a dispute letter to Midwest, but there was no response. She
16 then called Midwest and spoke to Rich Akerman there. He agreed to
17 remove the debt from her credit report if he would pay the \$505. Under
18 duress, and in an effort to remove the damaging adverse information, she
19 paid the money. Shortly thereafter, the debt was removed from her credit
20 reports.
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24 30. However, as explained above, Plaintiffs owed no money to these
25 lenders because any loans made by the lenders to her were void, which
26 fact Defendant Midwest knew or should have known.
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1 31. Apart from the items reported by Midwest, Plaintiffs had good
2 creditworthiness, but any consumer would have been significantly
3 harmed by the addition of these "fresh collection" accounts to their credit
4 reports.
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6 32. During the class period, Defendant Midwest engaged in similar
7 conduct with regard to the class members by furnishing false information
8 to the consumer reporting agencies claiming that the class members owed
9 money to the subject lenders even though all of the loans were void.
10

11 33. Defendant Midwest's purpose for furnishing the false debt information
12 to the consumer reporting agencies was to coerce Plaintiffs and the class
13 members to make payments on the illegal loans, which payments would
14 enrich Midwest.
15

16 34. Plaintiffs are informed and believe, and thereupon allege, that some
17 200 class members, such as Sampson and Munson, made payments under
18 duress triggered by the illegal credit reporting practice. The amount paid
19 was approximately, \$94,366. In the previous version of the complaint,
20 Plaintiff Franklin stated that once information was obtained through
21 discovery about the success of the efforts to coerce payments, she may
22 seek to amend the complaint to allege additional causes of action and to
23 add additional plaintiffs. She does that now.
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1 35. As a result of Defendant Midwest's actions or inactions, one or more of
2 the consumer reporting agencies continued to falsely report the status of
3 Plaintiff and the Class Members' until an unknown date.
4

5 36. When Defendant Midwest furnished information regarding the
6 particular debts to the reporting agencies, it knew or should have known
7 that the payday loan debt was illegal and void.
8

9 37. Accordingly, Defendant Midwest violated Civil Code § 1785.25 (a) each
10 time it furnished inaccurate or incomplete information about the
11 particular debt to a reporting agency.
12

13 38. Defendants Cooper/Gray are liable for the foreseeable torts of their
14 agent, Midwest, including the furnishing of inaccurate or incomplete
15 information about the payday loan debt.
16

17 39. Each of Midwest's violations was a willful violation in that it
18 intentionally and knowingly furnished inaccurate or incomplete
19 information to the consumer credit reporting agencies for the purpose of
20 extorting payment on the debts.
21

22 40. Plaintiffs and the Class Members are consumers within the meaning of
23 section 1785.3 (b) of the California Consumer Credit Reporting Agencies
24 Act in that they are natural individuals.
25

26 41. Plaintiffs and the Class Members suffered damages as a result of the
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1 violations of Civil Code § 1785.25 (a) as set forth above in that their credit
2 scores and credit ratings were adversely impacted by the false reporting
3 of the debt.
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5 42. In addition, Plaintiffs suffered actual damages in the form of emotional
6 distress, pain and suffering, humiliation, injury to reputation, and
7 prelitigation attorney's fees incurred trying to clear her credit.
8

9 43. Plaintiffs and each Class Member are entitled to recover actual
10 damages pursuant to Civil Code § 1785.31 (a) (2) (A) including court costs,
11 impairment of credit, loss of wages, attorney's fees and pain and suffering
12 in an amount according to proof.
13

14 44. Plaintiffs and each Class Member are entitled to recover punitive
15 damage pursuant to Civil Code § 1785.31 (a) (2) (B) in the amount of
16 \$5,000 against Defendants.
17

18 45. In addition, the Class as a whole is entitled to recover punitive damages
19 in an amount the court may allow. In determining the amount of award
20 in any class action, the court shall consider among relevant factors the
21 amount of any actual damages awarded, the frequency of the violations,
22 the resources of the violator and the number of persons adversely affected.
23

24 46. Further, Plaintiffs and the Class Members are entitled to injunctive
25 relief pursuant to Civil Code § 1785.31 (b). Defendant Midwest must
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1 update the information reported to the credit bureaus to delete all
 2 references to the debt and must not report the payday loan debt in the
 3 future.
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5 **SECOND CAUSE OF ACTION FOR VIOLATION OF THE**
 6 **CALIFORNIA CONSUMER UNFAIR COMPETITION LAW,**
 7 **BUSINESS AND PROFESSIONS CODE § 17200 ET. SEQ.,**
 8 **AGAINST ALL DEFENDANTS (BROUGHT AS INDIVIDUAL**
 9 **ACTION AND AS A CLASS ACTION)**
 10

11
 12 47. Plaintiffs incorporate in this cause of action the allegations contained
 13 in paragraphs 1 through 46, inclusive.
 14

15 48. The Unfair Competition Law prohibits any person from engaging in
 16 unfair competition as that term is defined in Business and Professions
 17 Code § 17200, which includes any "unlawful, unfair or fraudulent business
 18 act or practice," "unfair, deceptive, untrue or misleading advertising," and
 19 any act prohibited by Chapter 1 (commencing with section 17500) of Part
 20 3 of Division 7 of the Business and Professions Code.
 21

22 49. During the relevant time frame, Defendants violated Civil Code §
 23 1788.13 (f) and 15 USC § 1692e(5) and (10) by threatening to report the
 24 alleged debts to the consumer reporting agencies even though they were
 25 not reportable and Civil Code § 1785.25 (a) by reporting false and
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1 inaccurate information to the consumer reporting agencies as alleged
2 above and therefore engaged in unfair competition.

3
4 50. In addition, Defendants conduct was "unfair" in that they extorted
5 money by threatening to do acts which were not authorized by law.

6 51. As a proximate result of the violation of the UCL as set forth above,
7
8 Plaintiffs Sampson and Munson suffered injury in fact (damage to their
9 creditworthiness) and sustained monetary loss (approximately \$400-
10 \$500) according to proof.

11
12 52. Similarly, during the Class Period, each Member of the RESTITUTION
13 SUBCLASS paid money to Defendants pursuant to the aforementioned
14 extortion.

15
16 53. Pursuant to Business and Professions Code § 17203 and § 17204,
17 Plaintiffs are empowered to compel Defendants to restore to Plaintiffs and
18 the Class Members the money or property that Defendants acquired as a
19 result of any act which constitutes unfair competition.

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21 54. Further, Sampson and Munson and the Class Members are entitled to
22 injunctive relief under the UCL. Defendants continue to try to collect on
23 the invalid debts and even though they claim to have stopped reporting it
24 for now, they continue to threaten to do so in order to pressure Class
25 Members to pay.
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1 **REQUEST FOR JURY TRIAL**

2 WHEREFORE, Plaintiffs request trial by jury.

3 **PRAYER FOR RELIEF**

4
5 WHEREFORE, Plaintiffs pray for judgment on all causes of action against
6 Defendants as follows:

- 7
8 1. For an order certifying this matter as a class action;
- 9 2. For a declaration of the rights and liabilities of the parties including a
10 declaration that Defendants cannot furnish information to consumer
11 credit reporting agencies regarding the referenced payday loan debt;
- 12
13 3. For preliminary and permanent injunctive relief pursuant to Civil Code §
14 1785.31 (b) and Business and Professions Code § 17203 restraining and
15 enjoining Defendants from threatening to report or reporting the debt
16 information set forth above and requiring it to notify all consumer
17 reporting agencies to remove that debt information;
- 18
19 4. For actual damages on the first cause of action according to proof;
- 20
21 5. For punitive or exemplary damages on the first cause of action;
- 22
23 6. For restitution on the second cause of action;
- 24
25 7. For interest on the sum of money awarded as damages or restitution;
- 26
27 8. For reasonable attorney's fees pursuant to Civil Code § 1785.31 (d) and (f),
28 pursuant to the Private Attorney General doctrine in Code of Civil
 Procedure § 1021.5, pursuant to the "common fund" doctrine, and

1 pursuant to the "substantial benefit" doctrine.

2 9. For costs of suit incurred herein; and

3
4 10. For such other and further relief as the court may deem proper.

5 DATED: July 3, 2019

6 Respectfully submitted,

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8 By



9 JEFFREY WILENS
10 Attorney for Plaintiff
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